

## **REMARKS**

### **Overview**

Claims 1-13 and 21-25 are pending in this application. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

### **Improper failure to consider arguments**

The Examiner indicates that arguments set forth in the previous response failed to comply with 37 C.F.R. 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes from the references. The Examiner is asked to review 37 C.F.R. 1.111(b) and the Response of July 6, 2009. Note that for each independent claim, Applicant specifically identified language in the claims not taught in the prior art references, thereby identifying errors in the Examiner's consideration of the scope and content of the prior art. This not a mere general allegation.

### **Claim Rejections Under 35 U.S.C. § 103**

Claims 1-13 and 21-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0010590 to Lee in view of EP 1017 252 A2 to Bybee. These rejections are respectfully traversed.

Although discussed below with respect to each independent claim in more detail, it is believed it may be helpful to the Examiner to address some of the fundamental differences between these references and the invention as claimed. Lee, the primary reference is directed

towards a language dependent voice communication system (Title). As such, Lee uses two different translation units 10, 20 (See e.g. FIG. 1; FIG 2) which are in communication. In the embodiments of FIG. 3, and FIG. 4, Lee uses a telephone network and a mobile network, respectively and thus does not use translations units for each user. Bybee, on the other hand, is directed towards a hearing aid and does not involve foreign language translation. Thus, neither reference shows an earpiece providing voice translation. This is a fundamental and significant difference. The translation device of the claimed invention picks up voices of those who the wearer of the earpiece is listening to and translates that into a voice which the wearer of the earpiece understands. The translation device can be completely self-contained—the participation of the other party speaking in the foreign language is not needed. Neither references shows a device which performs that function. In other words, a device like Lee is FIRST LANGUAGE IN, FIRST LANGUAGE OUT relative to a user and not FIRST LANGUAGE IN, SECOND LANGUAGE OUT relative to a user. Or in other words, a device like Lee is SPEAKER CENTRIC. Thus, Lee uses a first device associated with a first speaker (person) and a second device associated with a second speaker (person). In Lee, the first person and the second person are trying to communicate. An earpiece providing voice translation allows a wearer of the earpiece to understand the language(s) spoken around them, without requiring the participation of those around them in the translation process. Thus, the present invention is highly advantageous in a variety of situations, including threat assessment or other situations associated with a military presence in a potentially hostile civil population situation (See e.g. Original Specification, Background of the Invention).

As will be further discussed below, both Lee and Bybee are missing significant elements of the claimed invention, moreover one skilled in the art would not have been led to combine

these references which are diverse in their teachings, the only apparent linkage between them being that derived from the Applicant's claimed invention. As such, the combination of these references is clearly based on nothing more than impermissible hindsight.

Independent claim 1 recites "A method of voice communication comprising: providing an earpiece having a housing and a plurality of microphones within the earpiece housing, the earpiece adapted for being worn by a user; selecting at least one of the plurality of microphones within the housing of the earpiece to detect a selected voice communication by a person other than the user; receiving the selected voice communication of a first language from the selected microphones; translating the selected voice communication from the first language to a second language by an intelligent control, the second language different from the first to create a translated voice communication; and transducing the translated voice communication at a speaker within the earpiece unit."

With respect to independent claim 1, claim 1 recites "providing an earpiece having a housing and a plurality of microphones within the earpiece housing, the earpiece adapted for being worn by a user." Neither Lee nor Bybee alone or in combination teach this step. Claim 1 further recites "selecting at least one of the plurality of microphones within the housing of the earpiece to detect a selected voice communication by a person other than the user." Neither Lee nor Bybee alone or in combination teach this step. Therefore, the rejection to claim 1 should be withdrawn for at least these reasons. As claims 2-11 depend from claim 1, these rejections should also be withdrawn.

The Examiner indicates "It would have been obvious to one of ordinary skill at the time of the invention to modify the system of Lee to provide an earpiece housing adapted for being worn by a user, as suggested by Bybee, for the purpose of providing a portable convenient unit to

the user" (Office Action, p. 3). Applicant respectfully disagrees. Lee, in fact, teaches away from such a combination by teaching the use of telephone or mobile phones (embodiments shown in Figure 3, Figure 4, respectively) where convenience is needed. Moreover, Lee does not recognize the situation where voice translation is needed without willing participation of both of the parties. Thus, when taken as a whole, one skilled in the art would not have found it obvious to combine these references in the alleged manner, especially using an earpiece to provide translation functions. For all these reasons, the rejection to claim 1 must be withdrawn. As claims 2-11 depend from claim 1, these rejections should also be withdrawn.

Independent claim 12 recites "A method of voice communication comprising: providing an earpiece having a housing and having at least one microphone within the housing and a speaker within the housing, the earpiece adapted for being worn on a user's head; directing the at least one microphone within the earpiece housing in a first direction; using the at least one microphone of the earpiece to detect a selected voice communication; receiving the selected voice communication of a first language from the at least one microphone within the earpiece housing; transmitting the selected voice communication from the earpiece unit to a translation device using a short range transmitter; translating the selected voice communication at the translation device from the first language to a second language using an intelligent control, the second language different from the first to create a translated voice communication; transmitting the translated voice communication from the translation device to the earpiece unit using a short range transmitter; transducing the translated voice communication at the speaker within the earpiece on the user's head."

With respect to independent claim 12, claim 12 recites "providing an earpiece having a housing and having at least one microphone within the housing and a speaker within the housing,

the earpiece adapted for being worn on a user's head." Neither Lee nor Bybee alone or in combination teach this step. Therefore, this rejection should be withdrawn. In addition, it is improper to combine Lee and Bybee in the alleged manner at least for the reasons previously discussed. Therefore, this rejection must be withdrawn for this independent reason as well.

Independent claim 13 recites "A method of voice communication comprising: providing an earpiece having a housing and having a plurality of microphones within the housing, the earpiece adapted for being worn by a user; selecting one of the plurality of microphones of an earpiece unit to detect a selected voice communication; receiving the selected voice communication of a first language from the selected microphones; transmitting the selected voice communication from the earpiece unit using a short range transmitter; receiving the selected voice communication with a short range receiver and sending the selected voice communication over a communications channel to a remote unit; translating the selected voice communication at the remote unit from the first language to a second language using an intelligent control, the second language different from the first to create a translated voice communication; sending the translated voice communication from the remote unit over the communications channel; transmitting the translated voice communication to the earpiece unit using a short range transmitter; and transducing the translated voice communication at a speaker within the earpiece housing."

With respect to independent claim 13, claim 13 recites "providing an earpiece having a housing and having a plurality of microphones within the housing, the earpiece adapted for being worn by a user." Neither Lee nor Bybee alone or in combination teach this step. Therefore, this rejection should be withdrawn. In addition, it is improper to combine Lee and Bybee in the alleged manner at least for the reasons previously discussed. Therefore, this rejection must be

withdrawn for this independent reason as well. For all these reasons, the rejection to claim 13 must be withdrawn.

Independent claim 21 recites "A method of voice communication, comprising: providing a nonocclusive earpiece housing and having a plurality of inputs for receiving voice communication and a speaker, the nonocclusive earpiece housing adapted for being worn by a user on the user's head; receiving the voice communication from at least one of the inputs; translating the voice communication to a different language using an intelligent control to create a translated voice communication; transducing the translated voice communication at the speaker of the nonocclusive earpiece."

With respect to independent claim 21, claim 21 recites "providing a nonocclusive earpiece housing and having a plurality of inputs for receiving voice communication and a speaker, the nonocclusive earpiece housing adapted for being worn by a user on the user's head." Neither Lee nor Bybee alone or in combination teach this step. Therefore, this rejection should be withdrawn. As claims 22-24 depend from claim 21, these rejections should also be withdrawn. In addition, it is improper to combine Lee and Bybee in the alleged manner at least for the reasons previously discussed. Therefore, this rejection must be withdrawn for this independent reason as well. For all these reasons, the rejection to claim 21 must be withdrawn. As claims 22-24 depend from claim 21, these rejections should also be withdrawn.

Independent claim 25 recites "A method of voice communication comprising: providing an earpiece having a housing and a plurality of microphones within the earpiece housing, the earpiece adapted for being worn by a user on a head of the user; selecting at least one of the plurality of microphones within the housing of the earpiece to detect a selected voice communication; receiving the selected voice communication of a first language from the selected

microphones; electronically translating the selected voice communication from the first language to a second language, the second language different from the first to create a translated voice communication; and transducing the translated voice communication at a speaker."

With respect to independent claim 25, claim 25 recites "providing an earpiece having a housing and a plurality of microphones within the earpiece housing, the earpiece adapted for being worn by a user on a head of the user." Neither Lee nor Bybee alone or in combination teach this step. Therefore, this rejection should be withdrawn. In addition, it is improper to combine Lee and Bybee in the alleged manner at least for the reasons previously discussed. Therefore, this rejection must be withdrawn for this independent reason as well. For all these reasons, the rejection to claim 25 must be withdrawn.

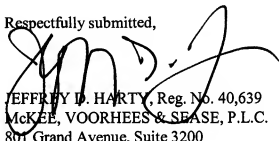
## Conclusion

This amendment accompanies the filing of a Request for Continued Examination (RCE). Please charge Deposit Account No. 26-0084 the amount of \$405.00 (small) for the RCE per the attached transmittal. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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